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In The
Supreme Court of the United States

DWAYNE L. GILLISPIE,

Petitioner,

vs.

MARINA CLUB OF TAMPA HOMEOWNERS ASSOCIATION, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Statement of the Case 1

I. Clarification of the Record 2

Reasons for Denying the Writ 10

I. Gillispie Has Not Articulated A Compelling Reason To Justify Discretionary Review By This Court 10

II. The Lower Courts Did Not Err In Deciding This Case 17

A. The District Court Did Not Abuse Its Discretion In Enforcing Its Final Judgment Incorporating The Mediation Agreement By Enjoining Husein Bhadelia And Gillispie From Allowing Anyone Other Than A Condominium Unit Owner From Occupying A Unit In Building N 17

B. Marina Club Met Its Burden For An Award Of Injunctive Relief Against Husein Bhadelia And Gillispie Even Under The Traditional Requirements For Injunctive Relief 20

C. The Eleventh Circuit Court Did Not Err In Applying The Law Of The Case Doctrine To Affirm The Ruling Of The District Court 21

Conclusion 24

TABLE OF AUTHORITIES

Page

CASES

Autozone Stores, Inc. v. Northeast Plaza Venture, LLC, 934 So.2d 670 (Fla.2d DCA 2006).....21

Alphamed, Inc. v. B. Braun Medical, Inc., 367 F.3d 1280 (11th Cir. 2004).....23

Bhadelia v. Marina Club of Tampa, 142 Fed. Appx. 399 (11th Cir. 2005), cert. denied, 546 U.S. 1090 (2006).....13, 23

Bhadelia v. Marina Club of Tampa, 2008 WL 311703, rehearing denied, ___ F.3d ___ (11th Cir. 2008).....10

Burr & Forman v. Blair, 470 F.3d 1019 (11th Cir. 2006).....18

Department of Business Regulation, Div. of Land Sales v. Siegel, 479 So.2d 112 (Fla. 1985).....14

Ex parte Leaf Tobacco Bd. of Trade, 222 U.S. 578 (1911).....12

Frisby v. Schultz, 487 U.S. 474 (1988).....15

Klay v. United Healthgroup, 376 F.3d 1092 (11th Cir. 2004).....18, 20

Marino v. Ortiz, 484 U.S. 301 (1988), rehearing denied, 484 U.S. 1082 (1988).....12

Mohammed Husein Bhadelia v. Marina Club of Tampa Homeowners Ass'n, Inc., 546 U.S. 1090 (2006).....5

TABLE OF AUTHORITIES – Continued

Page

STATUTES

All Writs Act, 28 U.S.C.A. § 1651(a) 17, 18, 20

Florida Statute § 95.281.....6, 8

Florida Statute § 718.101.....14

Florida Statute § 718.104(3) 8

Florida Statutes, Ch. 720 14

RULE

Sup.Ct. R. 10.....11, 24

STATEMENT OF THE CASE

Non-party, pro se petitioner, Dwayne Gillispie ("Gillispie") has petitioned this Court for a discretionary review of the final order entered by the United States District Court for the Middle District of Florida on September 7, 2007 that enjoined Mohammed Husein Bhadelia ("Husein Bhadelia") and those acting in concert with him including Gillispie from violating the trial court's final judgment in favor of Marina Club of Tampa Homeowners Association, Inc. ("Marina Club") by allowing non-condominium unit owners to occupy units in Husein Bhadelia's Building N at the Marina Club of Tampa Complex.

Gillispie's petition arises from a protracted dispute between Husein Bhadelia and Marina Club that has been waged in both federal and state court and has included four appeals by Bhadelia to the Eleventh Circuit Court of Appeals, this Court's previous denial of his petition for writ of certiorari to review the District Court of Florida's final judgment enforcing a mediation agreement that was affirmed by the Eleventh Circuit, and an appeal by Bhadelia's mortgage holder and brother, Abdul Razak ("Razak") of a summary judgment entered in favor of Marina Club and holding that Razak's mortgage lien had expired on the common areas and undeveloped land owned by Marina Club. Razak's appeal finally concluded on February 19, 2008 when the Supreme Court of Florida denied his request for jurisdiction to review the summary judgment entered in favor of

Marina Club and affirmed by Florida's Second District Court of Appeals.

I. CLARIFICATION OF THE RECORD

The facts set forth in the Petitioner's Statement of the Case do not accurately reflect the record and include matters that have never been part of the record of the courts below. Husein Bhadelia and his brother, Farooq filed an amended complaint against Marina Club on August 1, 2003. In their amended complaint, they alleged: in count I – that Marina Club retaliated against them in violation of the Americans With Disabilities Act ("ADA") and Fair Housing Amendment Act ("FHAA") after they sent their letter (by Gillispie) demanding that Marina Club recognize the rights of HUD Section 811 future tenants of Building N and that Marina Club make the Condominium Complex handicap accessible; in count II – that Marina Club was liable for racial and national origin discrimination due to alleged remarks made by its agents to the Bhadelias after the September 11, 2001 attack on America; in count III – for declaratory relief stemming from the notice of lis pendens that Marina Club filed against Husein Bhadelia's property in Marina Club's state court declaratory judgment action concerning title to the common areas and amenities that were supposed to be transferred to Marina Club under the recorded Declaration of Covenants, Restrictions and Easements ("CRE's") and in count IV – the Bhadelias' claimed that Marina Club allegedly committed fraud in representing that it had the authority to manage the common areas.

Marina Club filed its answer, affirmative defenses and counterclaim against the Bhadelias on October 14, 2003. In its counterclaim against the Bhadelias, Marina Club sought to quiet title in its name to the common areas and amenities that should have been conveyed to Marina Club before December 31, 1992 as required by the CRE's. Marina Club further alleged that Building N and other non-developed land was included within the legal description of the committed common properties to which title should have been conveyed to Marina Club.

On July 7, 2004, the district court referred the parties to court ordered mediation before the trial scheduled upon the November 2004 trial docket. Husein Bhadelia, a citizen and resident of Pakistan, did not appear at the mediation held on August 23, 2004. Nevertheless, the mediation proceeded due to representations from his brother, Farooq Bhadelia and the Bhadelias' attorneys to Marina Club's representatives, its attorneys and to the mediator, that Husein Bhadelia had given his brother, Farooq Bhadelia, full authority to settle all claims on Husein Bhadelia's behalf. At the conclusion of the mediation, the Bhadelias and Marina Club reached a settlement agreement that allowed the Bhadelias to complete and sell Building N as condominiums subject to deadlines for completion of construction and fines in the event the deadlines were not met. In addition, title to the amenities, common properties and two additional parcels upon which the original developer had reserved the right to build additional buildings

were to be quieted in Marina Club's name by a final judgment to be entered by the district court.

Marina Club obtained financing to pay Husein Bhadelia the $675,000.00 required by the terms of the mediation agreement and repeatedly attempted to schedule a closing in order to pay him and to obtain a deed from him to the property described in the mediation agreement free and clear of all liens. After the Bhadelias repudiated the mediation agreement, the district court held an evidentiary hearing and found that Farooq had his brother's unequivocal authority to enter into the mediation agreement. Therefore, the district court granted Marina Club's motion to enforce the mediation agreement, entered final judgment in its favor, and reserved jurisdiction to enforce the remaining terms of the mediation agreement.

On March 4, 2005, the Bhadelias appealed the district court's final judgment enforcing the mediation agreement to the Eleventh Circuit Court of Appeals. The Eleventh Circuit affirmed the district court's final judgment on July 27, 2005, and after the Bhadelias motion for rehearing was denied, the Eleventh Circuit issued its mandate on August 31, 2005. While his motion for rehearing was pending, Husein Bhadelia executed and delivered a deed to his brother, Razak, a citizen of Pakistan. In doing so, Husein Bhadelia attempted to convey to Razak all of the property at the Marina Club of Tampa Complex described in the deed that Husein Bhadelia had received from the Resolution Trust Corporation ("RTC") including the common areas, amenities and

undeveloped parcels that the district court's judgment had quieted in favor of Marina Club and that Husein Bhadelia was required to deed to Marina Club free and clear of all liens.

Husein Bhadelia purportedly conveyed the aforementioned property to Razak by a deed in lieu of foreclosure of a mortgage that Husein Bhadelia had previously executed and delivered to Razak in Hillsborough County, Florida. Husein Bhadelia subsequently filed a pro se Petition for Writ of Certiorari to this Court on September 12, 2005 challenging that the district court had jurisdiction to enter its final judgment, as well as the validity of the mediation agreement. This Court subsequently denied Husein Bhadelia's Petition for Writ of Certiorari on January 9, 2006. See *Mohammed Husein Bhadelia v. Marina Club of Tampa Homeowners Ass'n, Inc.*, 546 U.S. 1090 (2006).

After Husein Bhadelia's Petition was denied and because he had deeded Marina Club's property to his brother in an attempt to circumvent the district court's final judgment, Marina Club filed a motion on January 26, 2006 requesting the district court to enforce its final judgment, to hold Husein Bhadelia and his brother, non-party, Razak in contempt and to award sanctions against Husein Bhadelia and in favor of Marina Club for the expenses it had incurred as a result of his conduct in failing to obey the final judgment.

During an order to show cause hearing held before the district court on February 27, 2006,

Razak's attorneys stipulated that the deed in lieu of foreclosure given to Razak was void and the district court denied Marina Club's motions for sanctions against Razak. However, the district court found that Husein Bhadelia's refusal to obey its final judgment was willful and ruled that it would sanction him for his willful refusal to obey the district court's final judgment by awarding Marina Club the attorneys' fees it had incurred. The district court also refused to grant Marina Club the relief it requested as to Razak's mortgage and informed Marina Club that it would have to seek to quiet title against Razak's mortgage interest on Marina Club's property in Florida's state court. The state court thereafter entered a final judgment quieting title in favor of Marina Club after ruling that Razak's mortgage lien on Marina Club's property had expired under Florida Statute § 95.281.

After a certificate of occupancy was issued for Building N in July of 2007, Gillispie and his sister, Sunni Bhadelia, as agents for Husein Bhadelia, informed Marina Club that they were moving homeless, non-condominium unit owners into Building N on a temporary basis. Marina Club then moved the district court for a temporary restraining order and for a preliminary injunction. Marina Club argued that Husein Bhadelia, Gillispie and Sunni Bhadelia were violating the terms of the final judgment which had incorporated the mediation settlement agreement and required that Husein Bhadelia sell his

units in Building N as condominiums and not hold them as rental property.

In its affidavits filed in support of its motions, Marina Club stated that it was being irreparably harmed because Husein Bhadelia and his agents were not only violating the district court's final judgment, but by moving in residents without first submitting them to Marina Club for screening as required by the CRE's and the Rules promulgated by the Marina Club, Husein Bhadelia and his agents were violating the CRE's.

On August 14, 2007, the district court entered a temporary restraining order which restrained Husein Bhadelia, Gillispie, and Sunni Bhadelia from allowing anyone other than a buyer of a condominium unit from occupying a unit in Building N. In its order granting Marina Club's motion for a temporary restraining order, the district court found that Husein Bhadelia through his agents, Gillispie and Sunni Bhadelia, had moved a non-condominium unit owner into Building N in violation of its final judgment and that they intended to move additional individuals into Building N who were not owners and who had not been screened as required by Marina Club's CRE's that govern the use of the Marina Club of Tampa Complex. After concluding that there was imminent, irreparable harm to Marina Club caused by the conduct of Husein Bhadelia's agents that could not be remedied by a money judgment, the district court entered its restraining order, ordered Husein Bhadelia and Gillispie to file responses to Marina

Club's motion for preliminary injunction and set a hearing on Marina Club's motion.

Husein Bhadelia and Gillispie filed their respective responses to Marina Club's motion for preliminary injunction on September 4, 2007. In his response, Husein Bhadelia acknowledged that under the final judgment incorporating the mediation agreement, the units in Building N had to be submitted to a declaration of condominiums and that they could not be held as rental property. However, Husein Bhadelia claimed that he was moving homeless people into his units in Building N on a temporary basis pending the outcome of his brother, Razak's appeal to the State of Florida's Second District Court of Appeals of the state court's final summary judgment which held that Razak's mortgage lien on Marina Club's property had expired under Florida Statute § 95.281. Husein Bhadelia argued that he could not file a declaration of condominium required by the mediation agreement because Razak, as the mortgage holder, would not join in the execution of the declaration of condominium as required by Florida Statute § 718.104(3). Husein Bhadelia further argued that since he could not comply with the final judgment by filing a declaration of condominium, he should be permitted to use his property for charitable purposes in the interim. Husein Bhadelia also adopted the arguments made by Gillispie in his response.

In his response, Gillispie asserted that the district court never had proper jurisdiction over Marina

Club's original counterclaim against Husein Bhadelia, and as a result, the district court never had jurisdiction to issue its final judgment enforcing the mediation settlement agreement or to issue the temporary restraining order and the preliminary injunction requiring Husein Bhadelia and Gillispie to abide by the terms of the final judgment.

In reply to Gillispie's response, Marina Club filed the Eleventh Circuit Court of Appeals' Mandate and Opinion issued on July 27, 2005 and abstracts from Husein Bhadelia's and Marina Club's respective appellate briefs filed in Case No. 05-11292-II which established that the issues raised by Gillispie had already been decided by the Eleventh Circuit Court of Appeals during Husein Bhadelia's second appeal. The district court held a hearing on Marina Club's motion for preliminary injunction on September 7, 2007. During the hearing, the district court advised Husein Bhadelia's counsel that the Eleventh Circuit in its earlier appeal had already rejected the argument made by Gillispie that the district court lacked subject matter jurisdiction in a footnote to its July 27, 2005 opinion.

After hearing the arguments by Gillispie and the attorneys for the parties and after viewing the lengthy criminal record of the only person whom Husein Bhadelia and Gillispie had moved into Building N, the district court granted Marina Club's motion for preliminary injunction after ruling that the mediation agreement incorporated into the district court's final judgment contemplated that Building N

would be used as a condominium and not as a homeless shelter. The district court entered its order granting Marina Club's motion for preliminary injunction immediately after the September 7, 2007 hearing.

Gillispie subsequently filed his notice of appeal of the district court's September 7, 2007 order to the Eleventh Circuit Court of Appeals on September 18, 2007. The Eleventh Circuit Court of Appeals issued its opinion affirming the district court's final order granting an injunction against Husein Bhadelia and Gillispie on February 5, 2008 and further denied Gillispie's motion for rehearing and for rehearing en banc on March 18, 2008. *Bhadelia v. Marina Club of Tampa*, 2008 WL 311703, rehearing denied, ___ F.3d ___ (11th Cir. 2008). Gillispie subsequently filed his Petition for Writ of Certiorari to this Court on April 19, 2008. Husein Bhadelia did not personally appeal the final order of the district court granting an injunction and enjoining him from moving non-condominium unit owners into Building N.

REASONS FOR DENYING THE WRIT

I. GILLISPIE HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

The opinions and rulings of the courts below do not conflict with a decision of this Court or any Court of Appeals nor do they implicate a federal question

that has not been decided by this Court. "Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for writ of certiorari will be granted only for compelling reasons." *Id.* Gillispie has not presented a compelling reason to justify this Court's discretionary review of the opinion of the Eleventh Circuit Court of Appeals' affirming the final order entered by the district court enjoining Bhadelia, and those acting in concert with him, including Gillispie, from violating the district court's final judgment by permitting non-condominium unit owners from residing in Building N.

Being unable to argue conflict or the implication of an undecided federal question, Gillispie has attempted to argue in his Petition that this Court should exercise its supervisory powers because the Eleventh Circuit Court of Appeals approved the district court's departure from the accepted and usual course of judicial proceedings by affirming the district court's injunction against him. In actuality, Gillispie's petition to this Court is nothing more than a veiled attempt as Bhadelia's agent to re-argue the enforceability of the mediation agreement that has already been determined by the district court's final judgment against Bhadelia, that was subsequently affirmed by the Eleventh Circuit Court of Appeals and passed upon by this Court when it previously denied Bhadelia's petition for certiorari review of the final judgment.

In his Petition, Gillispie did not address the final order that he appealed which granted an injunction

against him for acting in concert with Husein Bhadelia to violate the district court's final judgment. Nor did Gillispie discuss the opinion of the Eleventh Circuit Court of Appeals affirming the district court's final order after finding that it did not abuse its discretion in granting its injunction. Since the final order granting the injunction specifically named Gillispie, he has standing to appeal that final order. However, rather than arguing that the district court, with the approval of the Eleventh Circuit, deviated from the accepted and usual course of judicial proceedings in entering its injunction, Gillispie has instead attacked the validity of the mediation agreement and the final judgment from a case in which he was not a party.

Gillispie, as a non-party to the proceedings that gave rise to the district court's final judgment, simply has no standing or right to seek certiorari review of that final judgment. This Court has consistently adhered to the well established basic rule that a nonparty cannot appeal the judgment in an action between others. *Marino v. Ortiz*, 484 U.S. 301, 303 (1988), rehearing denied, 484 U.S. 1082 (1988); *Ex parte Leaf Tobacco Bd. of Trade*, 222 U.S. 578, 581 (1911).

In attempting to support his claim that the district court departed too far from the accepted and usual course of judicial proceedings, Gillispie argues that the district court ignored Husein Bhadelia's request for declaratory relief set forth in Count III of the Bhadelias' amended complaint. Gillispie further

argues that Razak as the mortgagee should have been included as a party to the litigation and that he should have been a party participating at mediation. (Pet. at p.5-6). Gillispie's argument is without merit. The Bhadelias chose not to include Razak as a party to their amended complaint. Although Marina Club initially named Razak as a party to its counterclaim, it could not perfect service upon him because he was at all times a citizen and resident of Pakistan. More importantly, however, as the Eleventh Circuit Court of Appeals explained in footnote 2 to its July 27, 2005 Opinion, by entering into the mediation agreement with Marina Club, the Bhadelias and Marina Club resolved the entire case including the matters arising under the declaratory judgment count in the Bhadelias' Amended Complaint. *Bhadelia v. Marina Club of Tampa*, 142 Fed. Appx. 399, 402 (11th Cir. 2005).

Gillispie also argues that the district court and the Eleventh Circuit failed to determine whether "Florida Statutes 718 et seq. rendered the [mediation] agreement unenforceable as written." (Pet. at p.16-19). Even if Gillispie as a non-party has standing to challenge the district court's final judgment following Husein Bhadelia's prior appeal to the Eleventh Circuit and this Court's previous denial of certiorari review, Gillispie's contention is wrong and does not justify review pursuant to this Court's supervisory powers.

During the evidentiary hearing held on February 24, 2005, the district court heard arguments regarding the validity of the mediation agreement under Chapter 718 of the Florida Statutes. Marina Club's counsel explained to the district court that Marina Club is a homeowners association that was created by the original developer of the Marina Club of Tampa Complex under Chapter 720 of the Florida Statutes pursuant to the CRE's recorded in the public records of Hillsborough County, Florida.

According to the CRE's, Marina Club was incorporated to own and manage the Marina Club of Tampa Complex's common areas and amenities which were to be deeded by the original developer to Marina Club and included both condominium and non-condominium property. Marina Club's attorneys explained to the district court that under Florida case law interpreting the applicable Florida Statutes, a homeowners' association, such as Marina Club, which might eventually be partially comprised of non-condominium dwellers, and which presently had the authority to impose assessments upon properties which were not condominium property within scope of Florida's Condominium Act [West's F.S.A. § 718.101 et seq.] was not a "condominium association" under the Act. *Department of Business Regulation, Div. of Land Sales v. Siegel,* 479 So.2d 112 (Fla. 1985).

The above issues were also addressed by both the Bhadelias and Marina Club in their respective briefs to the Eleventh Circuit in the Bhadelias' appeal of the district court's final judgment. Accordingly, the

district court and the Eleventh Circuit did not so far depart from the accepted and usual course of judicial proceedings by entering or affirming the final judgment enforcing the mediation agreement to justify review under this Court's supervisory power. Moreover, the Supreme Court normally defers to the construction of a state statute given to it by the lower federal courts, in the belief that the district court and the Court of Appeals are better schooled in, and more able to interpret, the laws of their respective states. *Frisby v. Schultz*, 487 U.S. 474, 482 (1988).

Gillispie has also attempted to justify his request for certiorari review under this Court's supervisory powers by arguing that the questions presented for review affect the rights of all citizens of foreign countries purchasing property within the United States while utilizing banking services of their native countries. The Petitioner further contends that the impact upon the international banking world in relation to mortgages granted to citizens of foreign countries in the purchase of land within the United States requires the exercise of this Court's supervisory jurisdiction. (Pet. at p.1). Gillispie further claims that Husein Bhadelia purchased his property at the Marina Club of Tampa Complex through a mortgage executed and delivered in Pakistan to Razak and that Pakistan law has no statute of repose for its mortgages. (Pet. at p.3-4, 12-13).

Although Gillispie is requesting this Court to exercise supervisory review based upon the impact that the decisions of the courts below have upon the

rights of citizens of foreign countries to purchase property in the United States using foreign mortgages, nothing in the record below indicates that Gillispie ever purchased land in the United States using a foreign mortgage. Therefore, the Petitioner has no standing to make this argument. Moreover, there is nothing in the record below establishing that a Pakistani mortgage was even used by Husein Bhadelia to purchase his property at the Marina Club of Tampa from the RTC. The only evidence of a mortgage was the mortgage that Husein Bhadelia supposedly executed and delivered in Hillsborough County, Florida to Razak.

The argument made by the Petitioner regarding the impact upon the international banking world was never presented to a court below. Consequently, no court below could have had an opportunity to depart from the accepted and usual course of judicial proceedings with regard to Petitioner's argument concerning the impact of the district court's final judgment upon the international banking community to warrant supervisory review by this Court. The burden that the Petitioner proposes to place upon American citizens to protect the rights of foreign citizens who purchase property in the United States is untenable. Since the "Pakistani mortgage" supposedly used to purchase property in the United States was not recorded in the county where that land is located, how could anyone having any dealing with that property have knowledge of the existence of a Pakistani mortgage? Does the Petitioner really contend

that lenders and buyers of American real property must now search the registers and records of every country in the world to determine whether a foreign mortgage may somehow encumber property located in the United States? Clearly, the Petitioner's argument in favor of supervisory review has no merit.

II. THE LOWER COURTS DID NOT ERR IN DECIDING THIS CASE

A. The District Court Did Not Abuse Its Discretion In Enforcing Its Final Judgment Incorporating The Mediation Agreement By Enjoining Husein Bhadelia And Gillispie From Allowing Anyone Other Than A Condominium Unit Owner From Occupying A Unit In Building N

The district court properly enforced its final judgment incorporating the mediation agreement by entering an order granting Marina Club's motions for a temporary restraining order and preliminary injunction and prohibiting Husein Bhadelia and his agent, Gillispie from allowing anyone other than a condominium unit owner to occupy a unit within Building N.

According to the All Writs Act, 28 U.S.C.A. § 1651(a), a district court is authorized to issue an injunction to protect and enforce its final judgment. Moreover, the district court may issue an injunction under the All Writs Act without first requiring the

movant to meet the traditional four prong test for the issuance of an injunction. *Klay v. United Healthgroup*, 376 F.3d 1092, 1100 (11th Cir. 2004).

The authority of the district court under the All Writs Act is not even circumscribed by the identity of the parties immediately before it; at the district court's discretion, writs may be issued to third parties who are in a position to frustrate the district court's administration of its jurisdiction. *Burr & Forman v. Blair*, 470 F.3d 1019, 1026-1027 (11th Cir. 2006). Consequently, even though Gillispie and the individual he placed in possession of a unit in Building N were not parties to the proceedings in the courts below, the district court was authorized to issue an injunction against them if it deemed that such an action was necessary to enforce its final judgment.

In reviewing the district court's decision to grant an injunction, including an injunction under the All Writs Act, an appellate court applies an abuse-of-discretion standard. *Klay*, *Id.* at 1096. A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous. *Klay*, *Id.* at 1096. An abuse of discretion occurs if a district court imposes some harm, disadvantage, or restriction upon someone that is unnecessarily broad or does not result in any offsetting gain to anyone else or society at large. *Klay*, *Id.* at 1096. The mediation agreement incorporated into the district court's final judgment specifically required Husein Bhadelia to submit Building N to

condominium ownership by filing a declaration of condominiums, it further provided that the units in Building N shall be offered for sale ***and*** shall not be held by Husein Bhadelia as rental units and that Building N shall be deemed to be encumbered by the CRE's. Despite the requirements of the final judgment, after the certificate of occupancy was issued for Building N, Husein Bhadelia did not file a declaration of condominium and he did not sell the units in Building N as condominiums. Instead, Husein Bhadelia and his agents, Gillispie and Sunni Bhadelia moved a non-condominium unit owner with a lengthy criminal record into Building N.

In making its decision to grant Marina Club's motions for injunctive relief, the district court properly ruled that it was the intent of the mediation agreement incorporated into its final judgment that Building N be used as a condominium, and that it was clear to the court that the mediation agreement did not authorize Gillispie to use Building N as a homeless shelter. After interpreting the terms of the mediation agreement incorporated into its final judgment as construing the parties' intent that Building N only be used as a condominium, the district court did not abuse its discretion in making its temporary restraining order permanent to maintain the status quo until the issues remaining before the state court are resolved.

The district court properly found that there was a threat to the Marina Club's unit owners' families after reviewing the lengthy criminal record of the

occupant Husein Bhadelia moved into Building N. The district court then used its calculated sound discretion to protect the Marina Club condominium unit owners thereby achieving the ends of justice entrusted to the district court. Consequently, the Eleventh Circuit did not err in affirming the district court's order granting Marina Club's motion for a temporary restraining order under the authority of the All Writs Act.

B. Marina Club Met Its Burden For An Award Of Injunctive Relief Against Husein Bhadelia And Gillispie Even Under The Traditional Requirements For Injunctive Relief

The district court's order granting Marina Club's requested injunctive relief was also proper based upon the application of the traditional requirements for granting injunctive relief. A district court may grant traditional injunctive relief provided the movant can show: (1) a substantial likelihood of success on the merits, (2) irreparable injury if the injunction does not issue, (3) the threatened injury to the movant outweighs any damage an injunction may cause the opposing party, and (4) the injunction would not be adverse to the public interest. *Klay*, *Id.* at 1097.

Marina Club clearly demonstrated to the district court that the Respondent's request for an injunction met the four traditional requirements necessary for an award of injunctive relief based upon the evidence

in the record and the threat of imminent harm to the families owning units at Marina Club of Tampa due to Husein Bhadelia's refusal to permit Marina Club to screen occupants as required by the recorded restrictive covenants.

Florida law has long recognized that injunctive relief is available to remedy the violation of a restrictive covenant without a showing that the violation has caused an irreparable injury – that is, an injury for which there is no adequate remedy at law. *Autozone Stores, Inc. v. Northeast Plaza Venture, LLC*, 934 So.2d 670, 673 (Fla.2d DCA 2006). Consequently, even though Marina Club could establish irreparable harm, it was not required to show proof of irreparable injury or that a judgment for damages would be inadequate before obtaining injunctive relief since the conduct of Husein Bhadelia and his agents violated a recorded restrictive covenant. Therefore, the Eleventh Circuit did not err in affirming the district court's final order granting injunctive relief after finding that the district court did not abuse its discretion.

C. The Eleventh Circuit Court Did Not Err In Applying The Law Of The Case Doctrine To Affirm The Ruling Of The District Court

Every argument raised by Gillispie in his response filed in the district court had previously been asserted in the district court by Husein Bhadelia in his motion to dismiss and in his eleven affirmative

defenses asserted in his answer to Marina Club's counterclaim. Moreover, most of the documents Gillispie filed with his response in the district court were also filed as exhibits to Husein Bhadelia's motion to dismiss. In his answer to Marina Club's counterclaim, Husein Bhadelia also alleged that the district court lacked subject matter jurisdiction (second affirmative defense) and that Marina Club lacked standing (fourth and ninth affirmative defenses).

Contrary to Gillispie's arguments made in his response to Marina Club's motion for injunctive relief filed in the district court, and in his initial brief to the Eleventh Circuit, the district court did consider his arguments when they were made by Husein Bhadelia and the district court previously rejected them when it denied Husein Bhadelia's motion to dismiss. More importantly, however, Husein Bhadelia waived his rights with regard to his affirmative defenses when he settled with Marina Club at the court ordered mediation and when the mediation agreement was incorporated into the district court's final judgment.

Both Husein Bhadelia, in his amended complaint and Marina Club in its counterclaim, filed pleadings requesting the district court to determine their respective rights arising under the CRE's and Florida law. Accordingly, when Husein Bhadelia settled with Marina Club at mediation, he waived his right to continue to litigate those claims and defenses. Therefore, when Husein Bhadelia again raised the issues of jurisdiction and standing during his second appeal (Case No. 05-11292-I), the Eleventh Circuit in

footnote 2 properly stated: "The Bhadelias' remaining issues on appeal, such as the district court's initial denial of their motion to dismiss before sending the case to settlement, are without merit and are not discussed further. The settlement agreement resolved the entire case." See Footnote 2, *Bhadelia v. Marina Club of Tampa*, 142 Fed. Appx. 399 (11th Cir. 2005), cert. denied, 546 U.S. 1090 (2006).

Prior to the hearing on Marina Club's motion for preliminary injunction, and after reviewing the responses of Gillispie and Husein Bhadelia that raised lack of jurisdiction and standing, Marina Club filed excerpts from Husein Bhadelia's initial brief and Marina Club's answer brief and the aforementioned Eleventh Circuit Court opinion, Case No. 05-11292-I to demonstrate to the district court that jurisdiction and standing had previously been decided. The excerpts filed with the district court were included in the Appendix to Marina Club's Answer Brief filed with the Eleventh Circuit. Therefore, the district court was correct when it advised Gillispie and Husein Bhadelia's counsel at the September 7, 2007 hearing that it had jurisdiction and that Gillispie's arguments that were adopted by Husein Bhadelia had already been rejected by the Eleventh Circuit in its aforementioned opinion.

Under the law of the case doctrine, both the district courts and the Circuit Courts of Appeal are generally bound by a prior appellate decision in the same case. *Alphamed, Inc. v. B. Braun Medical, Inc.*, 367 F.3d 1280, 1285-1286 (11th Cir. 2004). Consequently,

the Eleventh Circuit did not err by applying the law of the case doctrine to refuse to again consider the arguments previously made by Husein Bhadelia and rejected by the Eleventh Circuit in its previous opinion when they were presented by Gillispie in his response to Marina Club's motion for injunctive relief filed in the district court. Therefore, the Petitioner has not met his burden of demonstrating any "compelling reasons" for his Petition to be granted. See Sup. Ct. R.10.

CONCLUSION

For all of the foregoing reasons, Respondent, Marina Club respectfully requests that this Honorable Court denies Petitioner, Gillispie's Petition.

Respectfully submitted,

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